IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.3898 OF 2004
IN
FIRST APPEAL STAMP NO.23744 OF 2003
IN
L.A.R. NO.20 OF 1987

The State of Maharashtra .... Applicant
Vs.
Damodar Laxman Kunte, since deceased, through his legal heirs:
Smt. Rukminibai D. Kunte & Ors. .... Respondents

Shri S.V. More, AGP, for the Applicant.

Shri S.D. Patil for the Respondent No.10.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: JUNE 21, 2005

P.C:

1. Heard the learned Advocate for the applicant and the respondent No.10. This is an application for condonation of 3 years and 105 days' delay in filing the appeal against the award passed by the reference Court enhancing the compensation for the acquisition of land. Undisputedly, the award was passed by the reference Court on 24-11-1999. The certified copy for the same was applied for on 9-2-2000, it was ready on 8-3-2000 and the same was collected on 9-3-2000. The necessary report under Rule 35(2) of the Rules for Conduct of Legal Affairs of Government, 1984 under the memorandum bearing No.1667/m was issued on 30-8-2000 pursuant to

the letter issued by the Special Land Acquisition Officer on 13-3-2000. The Superintendent (Legal), Law and Judiciary Department, Mantralaya issued the letter dated 2-5-2000 endorsing the opinion regarding the necessity to file the appeal against the award passed by the reference Court. Though the list of events given in the application refers to various memorandums being issued from one section to the other section of the Law and Judiciary Department from September, 2000 to June, 2001 and further correspondence between the Land Acquisition Officer and some other officers of the Government between June, 2001 to May, 2003, the resolution for filing the appeal is said to have been issued by the Law and Judiciary Department on 12-6-2003. The affidavit filed by the District Government Pleader discloses that the Law and Judiciary Department issued letter in favour of proposal for preferring the appeal on 21-5-2003 prior to resolution in that regard by the said Department on 12-6-2003 and thereafter the present appeal was sought to be filed along with the application for condonation of delay on 26-6-2003.

2. Though the list of events relate to various memorandums between one section to the other section of the Department and correspondence from one person to another during the period from May, 2000 till May, 2003, neither the application nor the affidavit discloses the relevancy of those memorandums and letters to the issue

relating to the filing of the appeal or the cause for the delay in filing the appeal. In fact the affidavit filed on behalf of the applicant by the AGP is totally silent about any such explanation.

3. The learned AGP appearing for the applicant submitted that it was an administrative delay and the Court should take a sympathetic view considering the fact that the enhancement of compensation will result in burden over the public exchequer.

4. Undoubtedly, the enhancement of compensation for the acquisition of land is bound to result in burden over the public exchequer. However this fact is not something new and certainly it cannot be said that the officer/s of the Law and Judiciary Department were unaware of the said situation.

5. Undisputedly, the Land Acquisition Officer had awarded Rs.30/- per sq.metre which was enhanced by the reference Court to Rs.50/- per sq.metre. The area acquired is 1626 sq.metres. Once the compensation was enhanced to the extent of nearly 2/3rd of the amount awarded by the Land Acquisition Officer, one fails to understand how the certified copy was not applied for by the District Government Pleader who had sought to defend the Government's interest in the said reference. That apart, even after obtaining the certified copy on

9-3-2000, the applicant, apart from referring to the correspondence from one officer to the other officer for a period of three years, has not been able to disclose any justifiable ground for the delay in arriving at the decision to file the appeal. This is not an extraordinary case as such or a totally new case as such for the Law and Judiciary Department. The Government had been acquiring land not only from the time of independence of the country but even prior to that. In fact the law relating to the acquisition of land is in force since 1894. Day in and day out the Government seeks to acquire land in different parts of the State for various public purposes. The Department is fully aware of the procedure in relation to filing of the appeal when the enhancement granted by the reference Court is not to the satisfaction of the Government. It is not the case of the Department of Law and Judiciary that any special decision of the Cabinet or that it related to policy matter of the Government which was yet to be decided by the Government before filing the appeal. Filing of appeal was a routine matter for the Department of Law and Judiciary in relation to the reference award. In the circumstances, there is absolutely no justification disclosed for the delay of 3 years and 105 days in filing the appeal. The only conclusion which could be arrived at is of sheer inaction on the part of the Government authorities in processing the matter in relation to the filing of the

appeal and mere inaction on the part of the Government authorities cannot enure to the benefit of the Government to seek condonation of delay in filing the appeal. In such cases the remedy lies somewhere else. It is for the Government to take necessary action against the officer/s responsible for the inordinate delay in filing the appeal and to recover the loss the Government might have suffered on account of the enhancement of compensation or the delay in filing the appeal after conducting an inquiry to find out who is/are responsible for causing such loss to the Government and the public exchequer.

6. In the result, therefore, in the absence of sufficient cause being shown for the condonation of delay in filing the appeal, the application is hereby dismissed with costs of Rs.2000/-. Liberty to the Government to recover the costs as well as the loss suffered by the public exchequer from the officer/s responsible for the delay in filing the appeal. We desist from giving any direction in that regard but we expect the Government to take necessary action in that regard as expeditiously as possible. The costs shall be deposited in the Registry within a period of ten weeks and on deposit thereof, the same shall be credited to the account of the Maharashtra State Legal Services Authority.

7. In view of dismissal of the application, the First Appeal Stamp No.23744 of 2003 automatically stands dismissed.

(R.M.S. Khandeparkar, J.)

(Anoop V. Mohta, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.3899 OF 2004
IN
FIRST APPEAL STAMP NO.23744 OF 2003
IN
L.A.R. NO.20 OF 1987

The State of Maharashtra .... Applicant
Vs.
Damodar Laxman Kunte,
since deceased, through his
legal heirs:
Smt. Rukminibai D. Kunte & Ors. .... Respondents

Shri S.V. More, AGP, for the Applicant.

Shri S.D. Patil for the Respondent No.10.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: JUNE 21, 2005

P.C:

In view of dismissal of the Civil Application No.3898 of 2004, this application does not survive and accordingly stands disposed of.

(R.M.S. Khandeparkar, J.)

(Anoop V. Mohta, J.)